Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000006-001 DT 09/05/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA GARY L SHUPE

v.

JON FRASER CARTWRIGHT (001) LORI L VOEPEL

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 4287131.

Defendant-Appellant Jon Fraser Cartwright (Defendant) was convicted in Phoenix Municipal Court of two counts of having a dog at large. Defendant contends the trial court used the wrong mental state, and that the evidence does not support the verdict. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On December 13, 2010, two dogs owned by Defendant ostensibly dug underneath Defendant's fenced property and escaped. The factual background is set forth in this Court's Minute Entry Ruling of March 14, 2012, and this Court will not repeat that recitation here. Defendant was cited for two counts of Phoenix City Code (P.C.C.) § 8–14(A) (permitting a dog to run at large) and two counts of P.C.C. § 8–14(B) (permitting a dog to be off the owner's property without a collar).

On My 19, 2011, the trial court held a bench trial. The State argued the 8–14(A) charge was a strict liability offense, while Defendant argued it required a negligent mental state. The trial court found Defendant guilty of both 8–14(B) charges, ordered the parties to submit briefs on this issue whether the 8–14(A) charge was a strict liability offense or required a negligent mental state, and took the matter under advisement. On June 3, 2011, the trial court found Defendant guilty of both 8–14(A) charges. On July 14, 2011, the trial court held the sentencing and ordered Defendant to pay a $500.00 fine for the two 8–14(A) charges. The trial court also ordered Defendant to pay $704.50 to J.K., one of the owners of the dog Defendant's dogs attacked, and $5,000 to J.K.'s husband, Dr. K.

On July 28, 2011, Defendant filed a timely notice of appeal. On appeal, Defendant contended P.C.C. § 8–14(A) requires a negligent mental state, and that the trial court erred in concluding it was a strict liability offense. The State changed its position from trial, agreed 8–14(A) requires a negligent mental state, but argued the evidence was sufficient to show Defendant acted with negligence. On March 14, 2012, this Court issued its Minute Entry Ruling remanding this matter to the trial court and ordering the trial court to submit a minute entry stating (1) whether it applied a strict-liability standard or a negligence standard, and (2) if it applied a negligence standard, upon what specific facts from the record did it reach the conclusion Defendant was negligent, thus resulting in his dogs being at-large. On May 14, 2012, the trial court issued a minute entry stating it had applied a negligence standard, and listed the specific facts upon which it had based its finding that Defendant was guilty. (Minute Entry, filed May 14, 2012, at 1–4.) The trial court then summarized its decision. (*Id*. at 4–5.) This Court has jurisdiction in this appeal pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Was the evidence presented sufficient to support the guilty verdicts.*

Defendant contends the State did not present sufficient evidence to support the guilty verdicts. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

> We review a sufficiency of the evidence claim by determining "whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." Substantial evidence is proof that "reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." We resolve any conflicting evidence "in favor of sustaining the verdict." "Criminal intent, being a state of mind, is shown by circumstantial evidence. Defendant's conduct and comments are evidence of his state of mind."

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the trier-of-fact, but whether there is a complete absence of probative facts to support its conclusion. *State v. Mauro,* 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). This Court has reviewed the evidence and concludes it was sufficient to support the guilty verdicts.

B. *Did this Court have the authority to remand this matter to the trial court.*

Defendant contends this Court should not have remanded this matter to the trial court so the trial court could state which mental standard it utilized. Trial judges are presumed to know the law and to apply it in making their decisions. *Walton v. Arizona*, 497 U.S. 639, 653 (1990). This Court thus must presume the trial court knew the mental state required a showing of negligence. Just to make sure, this Court remanded the matter to the trial court so the trial court could state which mental state it utilized. This Court concludes its actions were proper.

Relying on the following from *State v. Alvardo*, 178 Ariz. 539, 875 P.2d 198 (Ct. App. 1994), Defendant contends this Court should not have remanded the matter to the trial court:

> We have not found any authority for a post-judgment remand with directions that a trial court state the legal theory on which it based a guilty verdict in a criminal case. We conclude that such a remand would be unwise, if not unconstitutional, *on the record before us.* No matter how high our regard for the knowledge and integrity (and memory) of the trial court, a remand in this case with directions to specify whether the verdict was based on the right or the wrong legal theory argued by the State would have the appearance of giving the State a second try at convicting Appellant without giving Appellant the due process of a second trial.

178 Ariz. at 544, 875 P.2d at 203 (emphasis added). That decision was based on the record before that court and thus on the facts of that case, in which a remand would "giv[e] the State a second try at convicting Appellant." In the present case, this Court merely remanded the matter to the trial court for its statement, and did not allow the parties to have input to the trial court. Thus in this case, the State did not have a second try at convicting Defendant. In this case, this Court believes the dissent in *Alvardo* is more appropriate.

> I believe that a new trial is unnecessary. I would remand to the trial judge with directions, not to reconsider the case in light of the law set out in this opinion, but simply and solely to state the basis for the verdict he entered.

178 Ariz. at 544, 875 P.2d at 203 (Kleinschmidt, J., dissenting).

C. *Did the trial court err in ordering restitution to Dr. K.*

Defendant contends the trial court erred in ordering restitution to Dr. K. The record shows both Dr. K. and his wife owned the dog that Defendant's dog injured. Thus Dr. K. was a victim, and his having to take time off from his practice caused him an economic injury he would not have otherwise suffered if Defendant's dogs had not attacked his dog. The trial court therefore correctly ordered restitution.

III. CONCLUSION.

Based on the foregoing, this Court concludes the evidence was sufficient to support the convictions, and the trial court properly ordered restitution.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT